



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5851-99

29 June 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 19 August 1981 for four years. The record reflects that you were advanced to AOAA (E-2) and served without incident until 12 March 1982, when you tested positive for the presence of a controlled substance during a command assist urinalysis screening. You were warned that further drug use could lead to disciplinary action and an administrative discharge under other than honorable conditions.

During the months of April and June 1982 you received two nonjudicial punishments (NJP) for two instances of failure to obey a lawful order and failure to go to your appointed place of duty. You received a suspended reduction in rate to AOAR (E-1) as a result of the June NJP.

The record further reflects that on 4 August 1982 you were informed that administrative separation processing was being considered due to your frequent disciplinary infractions. However, action was held in abeyance pending further review of your conduct. You were advised that if no improvement was shown,

separation processing would be initiated. You were reported in an unauthorized absence (UA) status from 16-20 September and 24-27 September 1982.

On 10 November 1982 the reduction in rate that was suspended in June 1982 was vacated and ordered executed. On 19 November 1982 you were discharged under other than honorable conditions by reason of good of the service. The discharge processing documentation containing your request for discharge for the good of the service in lieu of trial by court-martial is not on file in the record.

In its review of your application the Board weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been nearly 18 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of two NJPs and the fact that you apparently requested discharge rather than face trial by court-martial for the two periods of UA totalling about seven days. Absent the facts and circumstances surrounding your request for discharge, a presumption exists that action by the Navy to discharge you was both appropriate and proper. Therefore, the Board believed that considerable clemency was extended to you when your request was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. You have provided no probative evidence nor a persuasive argument in support of your application. The Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director